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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,102	09/17/2003	Meridyth Mischel Webber	MERMIS 3.0-004	3700
530	7590	06/13/2005	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			NI, SUHAN	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/664,102	<b>Applicant(s)</b> WEBBER, MERIDYTH MISCHER	
	<b>Examiner</b> Suhan Ni	<b>Art Unit</b> 2643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-17 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/15/04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. In view of the papers filed 12/06/2004, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by addition of **Lawrence R. Stotts** as co-inventor.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

***Response to Election/Restriction***

2. This communication is responsive to the provisional election made without traverse on 01/21/2005 to prosecute the invention of Group I, claims 1-7 and 15-26. Group II, claims 8-14 are cancelled by the applicant, as being drawn to a non-elected invention.

***Drawings***

3. Figure 1 should be designated by a legend such as **--Prior Art--** because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (U. S. Pat. - 5,809,159).

Regarding claims 1, Lee discloses an electronic headset (Fig. 4), comprising: a housing (upper portion of 1) having at least one opening therein, said housing being adaptable to be arranged at least partially within an ear of a user such that said at least one opening is directed toward the auditory canal within the user's ear (Fig. 4); electronic circuitry (speaker) arranged within said housing, said circuitry being adapted to transmit sound through said at least one opening of said housing; a mounting member (other portion of 1) connected to said housing and being adapted to rest within an external cavity of the user's ear; and a clamp (3) connected to said housing for pivotal movement between a disengaged position where it is remote from the ear, and an engaged position where it is in contact with the rear side of an earlobe whereby secured assembly of the housing on the ear is obtained.

Regarding claims 4-5, Lee further discloses the electronic headset, wherein said electronic circuitry comprises an electroacoustic transducer and said housing includes an inner member and an outer member connected to the inner member to define a chamber for mounting the electronic circuitry therein inherently.

Regarding claims 6-7, Lee further discloses the electronic headset, wherein said mounting member includes an arcaded neck portion (Fig. 4) which provides a resting surface for the housing against the user's ear as claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-3 and 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (U. S. Pat. - 5,809,159).

Regarding claims 2-3, Lee further discloses the electronic headset wherein said housing includes an extended portion (Fig. 4), said at least one opening arranged through said extended portion, said extended portion arranged substantially adjacent the auditory canal of a user's ear. But Lee does not clearly teach that the extended portion does not entirely occlude auditory canal as claimed. Since providing a partially occluded auditory canal inserter with a venting feature for headset is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable partially occluded auditory canal inserter with a venting feature for the headset as an alternate choice, in order to provide more comfort to the user and provide more sound source for the user as well.

Regarding claims 18, Lee discloses an electronic headset (Fig. 4), comprising: a housing (upper portion of 1) having at least one opening therein, said housing being adaptable to be arranged at least partially within an ear of a user such that said at least one opening is directed

Art Unit: 2643

toward the auditory canal within the user's ear (Fig. 4); electronic circuitry (speaker) arranged within said housing, said circuitry being adapted to transmit sound through said at least one opening of said housing; a mounting member (other portion of 1) connected to said housing and being adapted to rest within an external cavity of the user's ear; and a clamp (3) connected to said housing for pivotal movement between a disengaged position where it is remote from the ear, and an engaged position where it is in contact with the rear side of an earlobe whereby secured assembly of the housing on the ear is obtained, the headset further including an extended portion (Fig. 4), said at least one opening arranged through said extended portion, said extended portion arranged substantially adjacent the auditory canal of a user's ear. But Lee does not clearly teach that the extended portion does not entirely occlude auditory canal as claimed. Since providing a partially occluded auditory canal inserter with a venting feature for headset is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable partially occluded auditory canal inserter with a venting feature for the headset as an alternate choice, in order to provide more comfort to the user and provide more sound source for the user as well.

Regarding claims 19-20, Lee further discloses the electronic headset wherein said clamp-connecting member (33) is pivotably mounted to said housing, and said clamp connecting member is pivotably mounted to said housing using an assembly (31, 2) that allows a force exerted on the user's ear lobe to be adjusted as claimed.

Regarding claims 21-23, Lee further discloses the electronic headset, wherein said mounting member includes an arcaded neck portion (Fig. 4) which provides a resting surface for the housing against the user's ear as claimed.

Regarding claims 24 and 26, Lee further discloses the electronic headset, wherein said electronic circuitry comprises an electroacoustic transducer and said housing includes an inner member and an outer member connected to the inner member to define a chamber for mounting the electronic circuitry therein inherently.

Regarding claim 25, Lee does not clearly teach a microphone as claimed. Since providing a microphone for a headset is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable microphone for the headset as an alternate choice, in order to provide a two-way communicational headset.

***Allowable Subject Matter***

6. Claims 15-17 are allowed.

***Conclusion***

7. The prior art of U.S. Patent made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of Non-Patent Literature Documents have not made of record, since there is no copy of each listed documents being provided by the applicant. Please provide a copy of each listed documents in next communication for consideration.

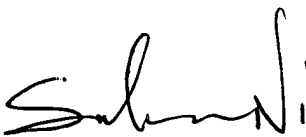
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(571)-272-7505**, and the number for fax machine is **(703)-872-9306**. The examiner can normally be reached on Tuesday and Thursday from 10:00 am to 8:00 pm, and may be reached on Monday, Wednesday and Friday from 10:00 am to 8:00 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at **(571)-272-7499**.

Art Unit: 2643

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600, or please see <http://www.uspto.gov/web/info/2600>.

June 9, 2005

  
**SUHAN NI**  
**PRIMARY EXAMINER**